

BEFORE THE
INDUSTRIAL MEDICAL COUNCIL
DEPARTMENT OF INDUSTRIAL RELATIONS
STATE OF CALIFORNIA

In the Matter of:

SHERIDON H. GROVES, M.D.
101 Ocean Avenue, Suite B-200
Santa Monica, CA 90402

Respondent.

Case No. 01-9713

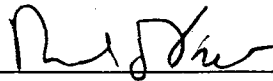
OAH No. L 2001090499

DECISION

The attached Proposed Decision of the Administrative Law Judge is hereby adopted
by the Industrial Medical Council as its Decision in the above-entitled matter.

This Decision shall become effective on 7-18-02

IT IS SO ORDERED _____

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PROPOSED DECISION

Robert Walker, Administrative Law Judge, State of California, Office of Administrative Hearings, heard this matter on March 14, 2002, in Oakland, California.

David A. Kizer, Counsel, Department of Industrial Relations, represented the complainant, D. Allan MacKenzie, M.D., Executive Medical Director of the Industrial Medical Council of California.

Albert J. Garcia, Attorney at Law, represented the respondent, Sheridan H. Groves, M.D.

ISSUE

On August 29, 2001, the Industrial Medical Council notified respondent of its decision not to reappoint him as a qualified medical examiner (QME). Pursuant to a stipulated settlement and disciplinary order, the Medical Board of California had placed respondent's license on probation. And that was the reason the council refused to reappoint respondent as a QME.

The issue is whether the council should suspend respondent's appointment or terminate it. If the council should only suspend, two further issues arise. Is the eight months during which respondent has been unable to act as a QME a sufficient suspension? Should respondent be placed on probation?

FACTUAL FINDINGS

1. In 1991 the Industrial Medical Council appointed respondent, Sheridan H. Groves, M.D., as a QME. From time to time, respondent applied for reappointment and the council reappointed him. By an application dated May 21, 2001, respondent again applied for reappointment. On August 29, 2001, however, the council notified respondent of its decision not to reappoint him. Pursuant to a stipulated settlement and disciplinary order dated February 9, 2001, the Medical Board of California had placed respondent's license on probation. And that was the reason the council refused to reappoint respondent as a QME.

2. In his stipulated settlement with the Medical Board, respondent admitted that he made inappropriate comments to and inappropriately touched two female patients. The incident concerning one patient occurred in 1994. The incident concerning the other occurred in 1998. In the accusation that led to the settlement, the Medical Board alleged that respondent violated the Business and Professions Code in that he engaged in gross negligence,¹ repeated negligent acts,² and sexual misconduct.³ In the stipulated settlement, respondent did not specifically admit either negligence or sexual misconduct. He, however, did admit having made inappropriate comments to and having inappropriately touched two female patients. He further admitted that his license to practice medicine, his certificate, was subject to discipline.

3. The disciplinary order to which respondent stipulated with the Division of Medical Quality, Medical Board of California, provides for respondent to be on probation for seven years. Among the conditions of probation are the following:

16. **ETHICS COURSE** Within sixty (60) days of the effective date of this decision, respondent shall enroll in a course in Ethics approved in advance by the Division or its designee and shall successfully complete the course within the first year of probation.

17. **PSYCHIATRIC EVALUATION** Within thirty (30) days of the effective date of this decision and on a periodic basis thereafter as may be required by the Division or its designee, respondent shall undergo a psychiatric evaluation (and psychological testing, if deemed necessary) by a Division-approved psychiatrist, who shall furnish an

¹ Bus. & Prof. Code, § 2234(b).

² *Id.* at § 2234(c).

³ *Id.* at § 726.

evaluation report to the Division or its designee. The respondent shall pay the cost of the psychiatric evaluation.

If respondent is required by the Division or its designee to undergo psychiatric treatment, respondent shall within thirty (30) days of the requirement notice submit to the Division for its approval the name and qualifications of a psychiatrist of respondent's choice. Respondent shall undergo and continue psychiatric treatment until further notice from the Division or its designee. Respondent shall have the treating psychiatrist submit quarterly status reports to the Division or its designee indicating whether respondent is capable of practicing medicine safely.

18. **THIRD PARTY PRESENCE** During probation, respondent shall have a third party present while examining or treating female patients. Respondent shall, within thirty (30) days of the effective date of this decision, submit to the Division or its designee for its approval the name(s) of persons who will act as the third party present. The respondent shall execute a release authorizing the third party(s) present to divulge any information that the Board may request during interviews by the probation monitor on a periodic basis.

4. Respondent's conduct amounted to a serious violation of rules governing the practice of medicine in California. His conduct was intentional, not merely negligent. Further, his conduct created, at least, the potential for harm to the two women he inappropriately touched. Some patients who suffer such behavior experience serious emotional or psychological problems as a consequence. Thus, there is no question that this matter raises a serious issue concerning the public welfare.

5. It has been two and one-half years since respondent's most recent offense.

6. There is no evidence that these incidents were part of an ongoing pattern of behavior. There is no evidence of prior warnings or other complaints. Respondent has done over 1,000 hours of QME evaluations, and there is no evidence that any patient has complained.

7. There also is no evidence that respondent has a history of engaging in other violations of the rules governing the practice of medicine.

8. The ethics course and the psychiatric evaluation that the Division of Medical Quality required as a condition of respondent's probation are the appropriate forms of further education or training.

9. Respondent accepts responsibility for his conduct. And he is strongly motivated to comply with the conditions of his probation with the Medical Board. If he fails to comply, he will lose his license to practice medicine.

LEGAL CONCLUSIONS

1. By reason of the matters set forth in Findings 1 and 2, it is determined that the Medical Board, the relevant licensing board, placed respondent's license on probation, and that that probation is scheduled to continue into the year 2008. Thus, there are grounds to suspend or terminate respondent's appointment as a QME.⁴

2. The Industrial Medical Council has no choice as to whether to take some action against respondent's appointment. The legislature has required the council either to suspend or terminate. "The council shall suspend or terminate as a medical evaluator any physician who has been suspended or placed on probation by the relevant licensing board."⁵

3. Because of the council's August 29, 2001, refusal to reappoint, respondent has been unable to act as a QME for eight months.

4. Under the circumstances of this case, protection of the public does not require an outright termination of respondent's appointment. A stayed termination subject to conditions of probation will be sufficient to protect the public. There is no question that this matter raises a serious issue concerning the public welfare. A number of considerations, however, lead to the determination that it would not be against the public interest for respondent to hold a probationary appointment. It has been two and one-half years since respondent's most recent offence. There is no evidence that these incidents were part of an ongoing pattern of behavior. There is no evidence of prior warnings or other complaints. Respondent has done over 1,000 hours of QME evaluations, and there is no evidence that any patient has complained. There also is no evidence that respondent has a history of engaging in other violations of the rules governing the practice of medicine.

5. The ethics course and the psychiatric evaluation that the Division of Medical Quality required as a condition of respondent's probation are the appropriate forms of further education or training. And the requirement of the presence of a third party whenever respondent examines or treats female patients practically eliminates the risk that respondent will repeat his wrongful conduct through 2007. Because respondent accepts responsibility for his conduct and because of the requirement of the ethics course

⁴ Lab. Code, § 139.2(m).

⁵ *Id.*

and psychiatric evaluation, that should be more than enough time for respondent to become fully rehabilitated.

6. Because the refusal to appoint has caused respondent to be unable to act as a QME for eight months, the statutory requirement that the council suspend or revoke his appointment has, in effect, been satisfied. Moreover, eight months is an appropriate period of suspension in this case. Thus, there is no need for a further suspension.

ORDER

The application of respondent, Sheridan Groves, for appointment as a QME is denied. The denial, however, is stayed for seven years or until the termination of respondent's probation with the Medical Board of California, whichever is later. During the period that the stay is in effect a probationary appointment is issued on the following conditions:

1. Within 15 days after the effective date of this decision, respondent shall provide the Industrial Medical Council (IMC) or its designee with proof that respondent has served a copy of this decision on:
 - a) Respondent's professional licensing board in California;
 - b) Every party for whom respondent has a pending QME or AME evaluation exam or medical/legal report due;
 - c) The Administrative Director of the Division of Workers' Compensation for distribution to Workers' Compensation Administrative Law Judges;
 - d) The president of the California Applicants' Attorneys Association;
 - e) The president of the California Defense Attorneys Association; and
 - f) Every party for whom respondent wrote a medical/legal report from February 9, 2001, the date of respondent's stipulated settlement with the Medical Board, to the effective date of this decision.
2. Respondent shall obey all federal, state, and local laws and regulations, all rules governing practice as a QME, and all rules governing respondent's professional area of practice.
3. Respondent shall fully comply with any court orders, including court ordered probation and orders to make payments.

4. Respondent shall submit quarterly declarations under penalty of perjury on forms provided by the IMC stating whether he has complied with all of the conditions of his probation.
5. Respondent shall comply with the IMC's probation surveillance program. Respondent shall, at all times, keep the IMC informed of his business and residence addresses, both of which shall be addresses of record. When there is a change in either address, respondent shall immediately write to the assigned IMC probation monitor and notify him of the change. Under no circumstance shall a post office box serve as an address of record.
6. Respondent shall immediately inform the IMC in writing of any travel to any areas outside the jurisdiction of California that lasts or is expected to last more than 30 days.
7. Respondent shall appear in person for interviews with the IMC, its designee, or its designated physicians or medical consultants on request and with reasonable notice.
8. In the event respondent leaves California to reside or to practice outside the State or in the event respondent's QME status becomes inactive in California, respondent shall notify the IMC probation monitor in writing within ten days of the dates of departure and return or the dates of inactive status. One's status is inactive if there is any period of more than 30 days during which one is not engaged in activities defined in sections 2051 and 2052 of the Business and Professions Code. All time spent in an intensive training program approved by the IMC or its designee shall be considered time during which one's status is active. Periods of residence or practice outside of California or periods during which one's status is inactive shall not apply to reduce the period of probation.
9. If respondent violates probation in any respect, the IMC, after giving respondent notice and the opportunity to be heard, may revoke probation and carry out the disciplinary order that was stayed. If an accusation or petition to revoke probation is filed against respondent during probation, the IMC shall have continuing jurisdiction until the matter is final, and the period of probation shall be extended until the matter of the new accusation or petition to revoke is final.
10. If respondent ceases practicing as a QME or, for any reason, is unable to satisfy the conditions of probation, respondent may voluntarily tender his QME certificate to the IMC to be cancelled. The IMC reserves the right to evaluate respondent's request and to exercise its discretion as to whether to grant the request to cancel the certificate or to take any other appropriate

and reasonable action. On the IMC's formal acceptance of the tender, respondent will no longer be subject to the conditions of probation.

11. The IMC shall note on each letter sent to an unrepresented injured worker that lists respondent's name on a panel of QMEs that respondent is on probation. The IMC shall make a similar note next to respondent's name wherever it appears in a QME roster issued during the period of probation. If an injured worker or any party asks a question concerning respondent's probationary status, respondent shall answer the question truthfully.
12. Respondent is suspended from performing any function as a QME or AME for eight months. This suspension, however, is deemed satisfied because of the period beginning August 29, 2001, during which respondent has been unable to serve as a QME or AME.
13. Within 30 days of the effective date of this decision, respondent shall submit to the IMC or its designee for its prior approval an educational course on forensic evaluation ethics or on matters charged in the accusation that led to respondent's probation with the Medical Board or both. Respondent shall complete the courses during the first year of probation and shall provide the IMC or its designee with proof that he has successfully completed the course or courses. Respondent may submit proof of having complied with the condition of his Medical Board probation requiring completion of an ethics course and may request that the IMC accept that in satisfaction of this condition. The IMC, however, is free to require respondent to take and complete additional courses.
14. Completion of any course required as a condition of probation shall be in addition to the continuing medical education requirements for reappointment as a QME.
15. Following respondent's completion of each course required as a condition of probation, the IMC or its designee may administer an examination to test respondent's knowledge of the subject of the course.
16. Respondent shall have a third party present while examining, evaluating, or treating female injured workers. Within 15 days of the effective date of this decision respondent shall submit to the IMC or its designee for its approval the names, business and home phone numbers, and business addresses of the persons who will act as the third parties present. Respondent shall execute a written release authorizing the designated third parties to divulge any information that the IMC may request during interviews by the probation monitor.

17. Within 30 days of the effective date of this decision and periodically thereafter as the IMC or its designee may require, respondent shall undergo a psychiatric evaluation by a psychiatrist or psychologist appointed by the IMC or its designee. The evaluator shall furnish a report to the IMC or its designee. Respondent may submit proof of having complied with the condition of his Medical Board probation requiring a psychiatric evaluation and may request that the IMC accept that in satisfaction of this condition. The IMC, however, is free to require respondent to undergo additional psychiatric evaluation.
18. If respondent is required to undergo psychiatric treatment, he shall, within 30 days of the notice of that requirement, submit to the IMC for its prior approval the name and qualifications of a psychiatrist. On the IMC's approval of the treating psychiatrist, respondent shall undergo and continue psychiatric treatment until the IMC advises him that he may discontinue treatment. The treating psychotherapist shall submit quarterly reports to the IMC. In the event both the IMC and the Medical Board require respondent to undergo psychiatric treatment, respondent may submit proof of having complied with the condition of his Medical Board probation and may request that the IMC accept that in satisfaction of this condition. The IMC, however, is free to require respondent to undergo additional psychiatric treatment.
19. On respondent's successful completion of probation, his QME certificate shall be fully restored.

DATED: May 9, 2002

Robert Walker

ROBERT WALKER
Administrative Law Judge
Office of Administrative Hearings